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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,252	03/25/2004	Timothy L. Fackler	FAC 03.01	6901
48008	7590	07/18/2007	EXAMINER	
VIRTUAL LEGAL, P.C. MICHAEL A. KERR P.O. BOX 22028 CARSON CITY, NV 89721			PAINTER, BRANON C	
		ART UNIT	PAPER NUMBER	
		3609		
		MAIL DATE	DELIVERY MODE	
		07/18/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/809,252	FACKLER, TIMOTHY L.
	Examiner	Art Unit
	Branon C. Painter	3609

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 December 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____.                                     |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/14/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____.                         |

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement (IDS) submitted on 12/14/2004 was filed after the mailing date of the non-provisional application on 03/25/2004. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### *Specification*

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The disclosure is objected to because of the following informalities:
  - a. Page 2, line 28, "jams". For the purpose of this examination, the examiner presumes that "jams" should read "jambs". Appropriate correction is required.

- b. Page 3, line 3, "jam". For the purpose of this examination, the examiner presumes that "jam" should read "jamb". Appropriate correction is required.
- c. Page 11, line 19, "10 configured". For the purpose of this examination, the examiner presumes that "10 configured" should read "10 is configured". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

- 4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- 5. Claims 5, 12, and 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims discuss fitting a door frame and a plurality of sheets of plywood to the pocket door assembly. As best understood by the examiner, the elements of the pocket door assembly seem to combine to form a frame for the pocket door. It is unclear what is meant by fitting a second door frame to an assembly which seemingly constitutes a pocket door frame. Furthermore, the necessity and function of the plywood sheets fitted to the assembly is unclear, and no reason for adding these elements is given in the specification. Further clarity is needed as to the meaning of these claims before they can be examined for novelty.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1, 6, 7, 8, 13, 14, 17, and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Regarding claim 1:

a. The phrase "A device for manufacturing a pocket door assembly" is vague and indefinite. To the examiner's best understanding, the elements of the assembly claimed seem to combine to form the pocket door assembly itself, not a device for manufacturing a pocket door assembly. For the purposes of this examination, the examiner presumes that the claim was meant to be read "A pocket door assembly."

9. Regarding claims 6, 7, 13, 14, 17, and 18:

a. The phrases "2 X 4 wall" and "2 X 6 wall" in these claims is vague and indefinite. There are no units to narrow the scope of the phrases "2 X 4" and "2 X 6," resulting in an ambiguous wall that could be "2 X 4" or "2 X 6" inches, feet, meters, etc. For the purposes of this examination, the examiner presumes that "2 X 4" and "2 X 6" are values in inches.

b. The phrases "2 X 4 wall" and "2 X 6 wall" in these claims are further vague and indefinite because it is unclear whether "2 X 4" and "2 X 6" refer to the size of the entire wall, or the size of the studs used to construct the wall. For the purposes of this examination, the examiner presumes that "2 X 4" and

"2 X 6" are meant to designate the size of the studs used to construct the wall.

10. Regarding claim 8:

- a. The phrase "An apparatus for manufacturing a pocket door assembly" is vague and indefinite. To the examiner's best understanding, the elements of the assembly claimed seem to combine to form the pocket door assembly itself, not an apparatus for manufacturing a pocket door assembly. For the purposes of this examination, the examiner presumes that the claim was meant to be read "A pocket door assembly."

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 1-4, 8-11, 15, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravel (U.S. Patent No. 6,250,016) in view of Todd (U.S. Patent No. 3,494,076) and Zerbst (U.S. Pub. No. 2004/0003556).

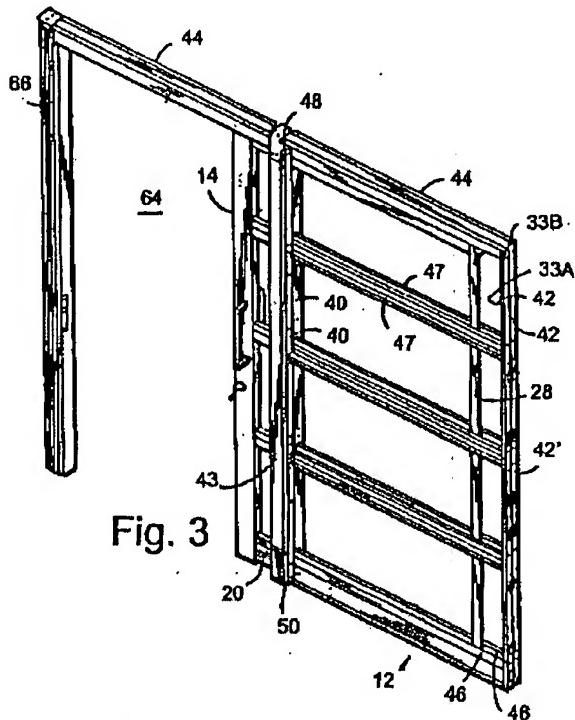
14. Regarding claims 1-4:

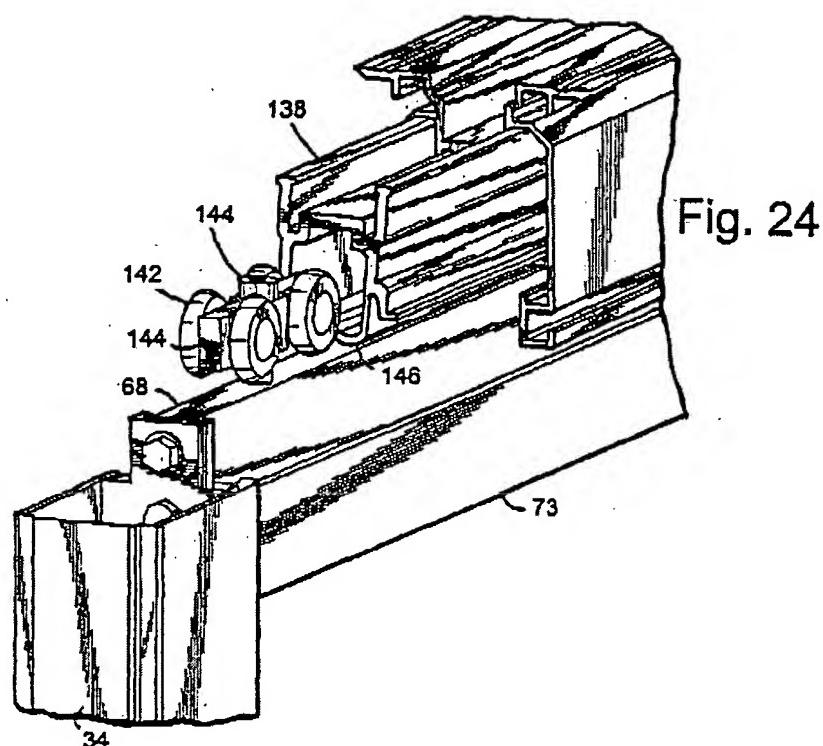
- a. Gravel discloses a pocket door including:
  - i. "a horizontal header element..." ("top member" 44, Fig. 3).
  - ii. "...a track element...coupled to said horizontal header..." ("support rail" 138, Fig. 24).
  - iii. "...a vertical back support..." ("second side member" 42, Fig. 3).
  - iv. "...a horizontal bottom element..." ("bottom members" 46, Fig. 3).
  - v. "...a pair of vertical supports that are substantially parallel to said vertical back support, said pair of vertical supports configured to be fixedly coupled to said horizontal header element and said horizontal bottom element." ("first side members" 40, Fig. 3) [claim 1].
  - vi. "a track element configured to receive a plurality of wheels that are fixedly coupled to a pocket door" ("support rail" 138, Fig. 24) [claim 2].
- b. Gravel does not expressly disclose: a plurality of markings on the horizontal elements of the assembly [claim 1], wherein the markings are configured to fit a plurality of standard sized doors [claim 3]; a first gusset fixedly coupled to the horizontal header element and the vertical back support [claim 1] and a second gusset fixedly coupled to the horizontal bottom element and the

- vertical back support [claim 1], wherein the gussets further comprise a pair of first and second gussets [claim 4].
- c. Todd discloses a plurality of markings on the horizontal elements of a pocket door [claim 1] that are configured to adapt the pocket for a variety of standard sized pocket doors [claim 3] ("markings" 22, Fig. 4). Adding markings as taught by Todd to the pocket frame of Gravel allows the pocket frame to be easily adapted to fit pocket doors in a plurality of common sizes.
  - d. Zerbst discloses a first gusset fixedly coupled to the horizontal header element and the vertical back support [claim 1] and a second gusset fixedly coupled to the horizontal bottom element and the vertical back support [claim 1] ("gussets" 33, Fig. 4). Adding gussets to the top and bottom frame corners as taught by Zerbst to the pocket frame of Gravel adds strength and stability to the frame, as well as aiding in the formation and retention of a square corner.
  - e. The examiner further notes motivation for combining the references as set forth in Zerbst: "Frame 32 may also include gussets 33 at the junction of individual channels to add strength and stability to frame 32" (paragraph 33).
  - f. Gravel, Todd, and Zerbst are analogous art because both are from the field of endeavor of pocket door assemblies.
  - g. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the pocket door of Gravel to include the horizontal member markings of Todd and the corner gussets of Zerbst in

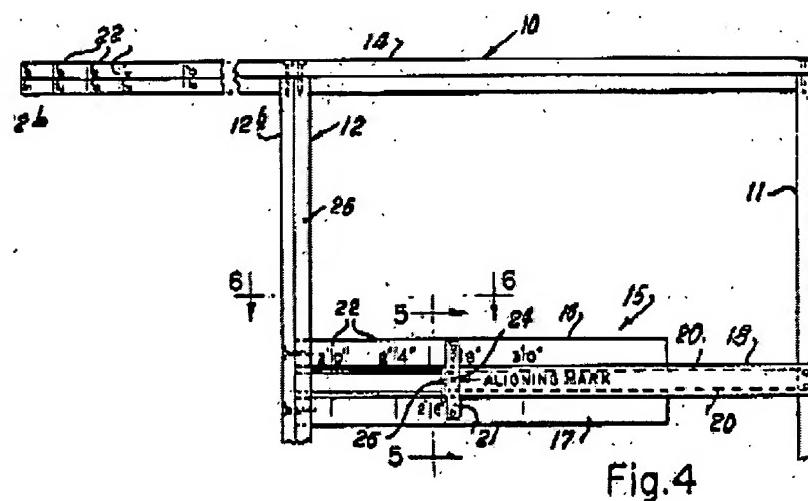
order to ease the modification of the frame to allow for a plurality of common door sizes, as well as to strengthen and stabilize the frame and further ensure square corners.

h. Gravel in view of Todd and Zerbst discloses the claimed invention except for gussets further comprising a pair of first and second gussets [claim 4]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use two gussets at each corner rather than one, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

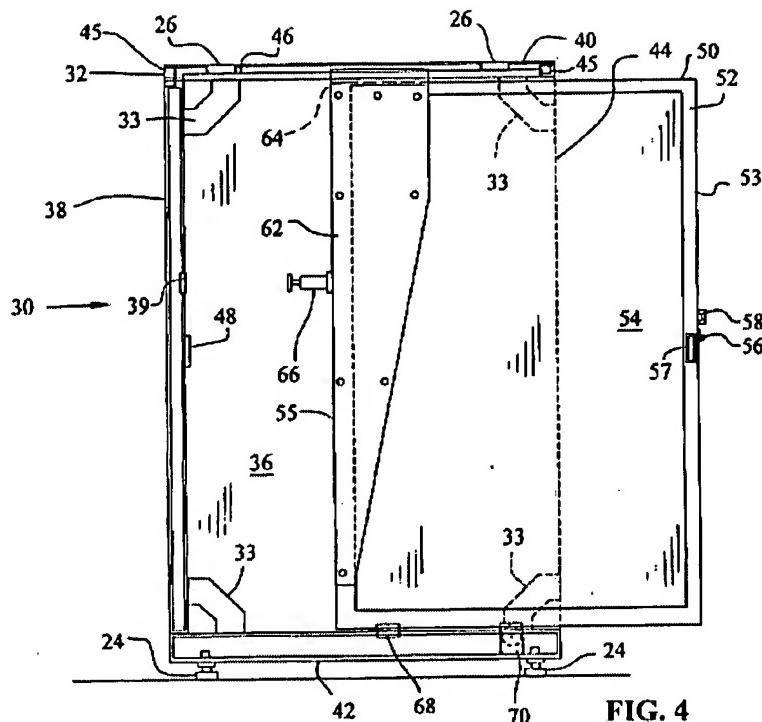




Reproduced from U.S. Patent No. 6,250,016



Reproduced from U.S. Patent No. 3,494,076

**FIG. 4**

Reproduced from U.S. Pub. No. 2004/0003556

## 15. Regarding claims 8-11:

- a. Gravel discloses a pocket door including:
  - i. "a horizontal header element...configured to interface with said framed structure" ("top member" 44, Fig. 3).
  - ii. "...a track element...coupled to said horizontal header and configured to be slidably coupled to said pocket door..." ("support rail" 138, Fig. 24).
  - iii. "...a vertical back support configured to interface with said frame structure..." ("second side member" 42, Fig. 3).
  - iv. "...a horizontal bottom element..." ("bottom members" 46, Fig. 3).

- v. "...a pair of vertical supports that are substantially parallel to said vertical back support, said pair of vertical supports configured to be fixedly coupled to said horizontal header element and said horizontal bottom element." ("first side members" 40, Fig. 3) [claim 8].
- b. Gravel does not expressly disclose: a plurality of markings on the horizontal elements of the assembly [claim 8], wherein the markings are configured to fit a plurality of standard sized doors [claim 11]; a first means for generating a square corner by fixedly coupled to the horizontal header element and the vertical back support [claim 8] and a second means for generating a square corner by fixedly coupled to the horizontal bottom element and the vertical back support [claim 8], wherein the first and second means comprise gussets [claim 9] connected with a fastening element [claim 10].
- c. Todd discloses a plurality of markings on the horizontal elements of a pocket door [claim 8] that are configured to adapt the pocket for a variety of standard sized pocket doors [claim 11] ("markings" 22, Fig. 4). Adding markings as taught by Todd to the pocket frame of Gravel allows the pocket frame to be easily adapted to fit pocket doors in a plurality of common sizes.
- d. Zerbst discloses a first means for generating a square corner by fixedly coupled to the horizontal header element and the vertical back support [claim 8] and a second means for generating a square corner by fixedly coupled to the horizontal bottom element and the vertical back support [claim 8], wherein the first and second means comprise gussets [claim 9] and are

connected with a fastening element [claim 10] ("gussets" 33, Fig. 4). Adding gussets to the top and bottom frame corners as taught by Zerbst to the pocket frame of Gravel adds strength and stability to the frame, as well as aiding in the formation and retention of a square corner.

- e. The examiner further notes motivation for combining the references as set forth in Zerbst: "Frame 32 may also include gussets 33 at the junction of individual channels to add strength and stability to frame 32" (paragraph 33).
- f. Gravel, Todd, and Zerbst are analogous art because both are from the field of endeavor of pocket door assemblies.
- g. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the pocket door of Gravel to include the horizontal member markings of Todd and the corner gussets of Zerbst in order to ease the modification of the frame to allow for a plurality of common door sizes, as well as to strengthen and stabilize the frame and further ensure square corners.

16. Regarding claims 15 and 19:

- a. Concerning claims 15 and 19, the combination renders the claimed method steps obvious since such would be the logical manner of using the combination.
1. Claims 6, 7, 13, 14, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravel (U.S. Patent No. 6,250,016) in view of Todd (U.S. Patent

No. 3,494,076) and Zerbst (U.S. Pub. No. 2004/0003556) as applied to claims 1-4, 8-11, 15, and 19 above, and further in view of Hastings (U.S. Patent No. 3,605,365).

2. Regarding claims 6, 7, 13, and 14:

- a. Gravel in view of Todd and Zerbst discloses a panel door with markings and gussets as set forth above.
- b. Gravel in view of Todd and Zerbst does not expressly disclose that the wall in which the pocket door is installed is constructed of studs measuring 2" x 4" or 2" x 6".
- c. Hastings discloses a wall construction where "studs 116 will be 2" x 4" or 2" x 6" " (column 9, lines 35-36). Constructing the pocket door to engage with walls whose studs are sized 2" x 4" or 2" x 6" as taught by Hastings allows the pocket door to be compatible with a great number of walls, since the stud sizes taught by Hastings are industry standards.
- d. Gravel in view of Todd and Zerbst and Hastings are analogous art because both are from the field of endeavor of building construction.
- e. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to construct the panel door of Gravel in view of Todd and Zerbst in a way that it would allow it to be installed in a wall with 2" x 4" or 2" x 6" studs as taught by Hastings, since this would ensure the pocket door could be installed in walls constructed to industry standards.

3. Regarding claims 17 and 18:

- a. The combination renders the claimed method steps obvious since such would be the logical manner of using the combination.
- 4. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gravel (U.S. Patent No. 6,250,016) in view of Todd (U.S. Patent No. 3,494,076) and Zerbst (U.S. Pub. No. 2004/0003556) as applied to claims 1-4, 8-11, 15, and 19 above, and further in view of Pritchard (U.S. Patent No. 4,127,347).
  - a. Gravel in view of Todd and Zerbst discloses a panel door with markings and gussets as set forth above.
  - b. Gravel in view of Todd and Zerbst does not expressly disclose that the gusset connecting means is a plurality of screws.
  - c. Pritchard discloses a gusset where "the gusset is positioned therein and fastened in place by any suitable fastening means such as screws" (Abstract). Fastening the gusset to the panel door of Gravel in view of Todd and Zerbst with screws as taught by Pritchard allows the gusset to be connected more securely and with less play than the apparent tongue-and-groove gusset connection of Zerbst (Fig. 4A, not shown).
  - d. Gravel in view of Todd and Zerbst and Pritchard are analogous art because both are from the field of endeavor of frame construction.
  - e. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to fasten the gusset of Gravel in view of Todd and Zerbst with screws as taught by Pritchard, since this would create a more secure, less flexible corner bracing.

***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Branon C. Painter whose telephone number is (571) 270-3110. The examiner can normally be reached on Mon-Fri 7:30AM-5:00PM, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached on (571) 272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Victor Batson  
Supervisory Patent Examiner  
Art Unit 3609

Branon Painter  
06/08/2007